



THE FAMILY COURT OF THE STATE OF DELAWARE

L. J.,)	FILE NO.:	CN 04-06020
Petitioner)		
)		
vs.)	CPI NO.:	18-18378
)		
W. J.,)		
Respondent)		

INTERIM ORDER

Before the Court is a Motion for Interim Relief filed on August 20, 2018 by L. J. (“Wife”) against W. J. (“Husband”). Husband did not file a responsive Motion. In her Motion, Wife requests, among others, an interim Qualified Domestic Relations Order (“QDRO”) on Husband’s Siemens pension and an accounting from Husband on any payouts he has received from his pension in the past year. Also, on June 22, 2018, Wife filed a Petition for Divorce which is still pending at this time. As seen in their filings regarding this divorce action, the parties agree that their date of separation was May 15, 2011. Wife is represented by Gary Spritz, Esquire. Husband is self-represented.

In support of her request for an Interim QDRO, Wife cites to 13 Del. C. § 1509(a)(1) and (a)(5). 13 Del. C. § 1509(a)(1) states that:

Upon the filing of a petition for divorce or annulment, a preliminary injunction shall be issued against both parties to the action, enjoining them from: Transferring, encumbering, concealing or in any way disposing of any property except in the usual course of business or for the necessities of life, and requiring the parties to notify the other of any proposed extraordinary expenditures and to account to the Court for all extraordinary expenditures after the preliminary injunction becomes effective;

However, 13 Del. C. § 1509(a)(5) is a section that does not exist in the current Delaware code. Therefore, the Court will assume that in writing 13 Del. C. § 1509(a)(5) Wife may have been referring to 13 Del. C. § 1509(b)(5) which states that:

Petitioner in the petition for divorce or annulment, or by motion filed simultaneously with the petition, or either party by motion filed after the filing of the petition, may move for 1 or more of the following interim orders: Requiring a party to make available to his or her spouse designated personal property and/or fixtures, even though titled in such party's name alone or jointly with someone else, upon such terms and conditions as the Court may impose;

Although 13 Del. C. § 1509(a)(1) expressly grants the Court the power, upon receipt of a petition for divorce, to enjoin another party from “[t]ransferring, encumbering, concealing, or in any way disposing” of any marital property, that statutory provision, in its plain language, does not permit the Court to order a party to take certain action such as divide marital assets in the form of an interim QDRO. However, the Court can, under this provision, enjoin Husband from taking further distributions from his Siemens pension. It can also require Husband to account for past distributions taken during the marriage from the pension.

As to 13 Del. C. § 1509(b)(5), this provision also does not grant the Court the statutory power to order the issuance of an interim QDRO. This provision specifically relates to “personal property and/or fixtures.” Using the canon of statutory construction *noscitur a sociis*, where “the intended meaning of an ambiguous word depends on the context in which it is used,”¹ the Court understands the meaning of personal property as paired with “fixtures.” Therefore, this provision only allows for the exchange of tangible personal property, or *personalty*,² and *fixtures*,³ and not a person’s tangible financial and intangible assets. Retirement funds are neither personalty nor fixtures as envisioned by § 1509(b)(5). Rather, retirement funds are better understood as *choses in action*, or “right[s] to personal things of which the owner has not the possession, but merely a right of action for their possession.”⁴

Finally, the Court has found no case precedent in Delaware that this Court has authority by which to grant a pre-divorce interim QDRO.

ACCORDINGLY, IT IS HEREBY ORDERED ON AN INTERIM BASIS AS FOLLOWS:

1. Husband shall be enjoined from taking any distributions from his Siemens pension henceforth and provide an accounting to Wife for all monies taken from this pension since May 15, 2011, the date of the parties’ separation, within thirty (30) days of this Order.
2. Wife’s request for a pre-divorce interim QDRO is ***DENIED***.

IT IS SO ORDERED.

September 24, 2018

Date

ROBERT B. COONIN, JUDGE

RBC/plr

cc: Parties, File

¹ <https://thelawdictionary.org/noscitur-a-sociis/>

² Personal property; movable property; chattels. <https://thelawdictionary.org/personalty/>

³ A fixture is a personal chattel substantially affixed to the land, but which may afterwards be lawfully removed therefrom by the party affixing it, or his representative, without the consent of the owner of the freehold. <https://thelawdictionary.org/fixture/>

⁴ <https://thelawdictionary.org/chose-in-action/>